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Application Number	09/176,077
Filing Date	October 20, 1998
First Named Inventor	R. A. Green
Art Unit	2176
Examiner Name	William Bashore
Attorney Docket Number	CA9-98-038

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Technology Center 2100

Total Number of Pages in This Submission	14

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Firm or Individual name	Robert A. Voigt, Jr. Winstead Sechrest & Minick P.C.
Signature	
Date	October 18, 2004

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

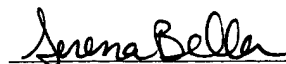|		
In re Application of:	:	Before the Examiner:
R. A. Green	:	Bashore, William
Serial No.: 09/176,077	:	Group Art Unit: 2176 **RECEIVED**
Filed: October 20, 1998	:	**OCT 2 6** 2004
	:	IBM Corporation **Technology Center 2100**
Title: WEB-BASED FILE REVIEW	:	P.O. Box 12195
SYSTEM UTILIZING SOURCE	:	Dept. T81/503
AND COMMENT FILES	:	Research Triangle Park, NC 27709

October 18, 2004

REPLY BRIEF

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is being submitted in response to the Examiner's Answer dated

October 4, 2004 (Paper No. 27), with a two-month statutory period for response set to

expire on December 4, 2004.

I.   RESPONSE TO EXAMINER'S ARGUMENTS

A.   Response to Examiner's statement as to the status of the claims.

The Examiner states that claims 21-32, 39 and 41 are allowed. Paper No. 27,
page 2. The Examiner further states that claims 1-8, 10, 11, 13-20, 33-38 and 40 are
pending. Paper No. 27, page 2. The Examiner further states at claims 1-8, 10, 11, 13-20,
33-38 and 40 stand rejected. Paper No. 27, page 2. Appellant respectfully asserts that
claims 1-8, 10, 11 and 13-41 are pending and not simply claims 1-8, 10, 11, 13-20, 33-38
and 40. The Examiner has allowed claims 21-32, 39 and 41 which are pending as well.

B.   Response to Examiner's argument, as discussed on page 9 of Paper No.
27, that the Examiner did present objective evidence and appropriate
motivation for combining Gramlich and Day.

The Examiner asserts that Appellant argues that the motivation to combine
references cannot originate from a secondary reference. Paper No. 27, page 9. Appellant
agrees with the Examiner that the motivation to combine references can originate from
the secondary reference or from the primary reference as well as from the knowledge
generally available to one of ordinary skill in the art. M.P.E.P. §2142. However, the
Examiner's motivation, "providing the benefit of capitalizing on the ubiquity of web
browsers" (Paper No. 27, page 9), does not address as to why one of ordinary skill in the
art would modify the primary reference, Gramlich, to have means for requesting the
source file using unmodified standard messaging protocols, as recited in claim 1 and
similarly in claims 21, 33 and 39 (Examiner admits that Gramlich does not teach this
limitation). See In re Lee, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner has
not explained how providing the benefit of capitalizing on the ubiquity of web browsers
(Examiner's motivation) is related to requesting the source file using unmodified standard
messaging protocols (Examiner admits that Gramlich does not teach this limitation).
Instead, the Examiner is merely relying upon his own subjective opinion which is
insufficient to support a prima facie case of obviousness. In re Lee, 61 U.S.P.Q.2d 1430,
1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support

a *prima facie* case of obviousness for rejecting claims 1-8, 10, 11, 13-20, 33-38 and 40. *Id.*

Furthermore, the Examiner's motivation is a motivation for Day, the secondary reference, to solve its problem. Day teaches that the method and system according to the present invention allows for the conversion of existing document source formats into a web-compatible review format to capitalize on the ubiquity of web browsers within development organizations. Column 7, lines 27-31. Day further teaches that current tools do not allow for distributed reviews of documents via the web and the Internet. Column 3, lines 49-51. Day further teaches that current methods for team writing are typically time consuming and cumbersome and document intrusive. Column 3, lines 51-52. Day further teaches that it can be seen that a need exists for non-intrusive and easy-to-use document review interface that can be utilized by different reviewers at different geographic locations over the World Wide Web. Column 3, lines 59-62. By capitalizing on the ubiquity of web browsers within development organizations, Day allows for the conversion of existing document source formats into a web-compatible review format thereby allowing for non-intrusive and easy-to-use document review interface that can be utilized by different reviewers at different geographic locations over the World Wide Web. Hence, the Examiner's motivation is a motivation for Day to solve its problem. This is not a suggestion to combine the primary reference, Gramlich, with Day. The Examiner must provide objective evidence as to why one of ordinary skill in the art with the primary reference (Gramlich) in front of him, would have been motivated to modify the primary reference (Gramlich) with the teachings of the secondary reference (Day). *See In re Lee,* 61 U.S.P.Q.2d 1430, 1433-1434 (Fed. Cir. 2002); *In re Kotzab,* 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1-8, 10, 11, 13-20, 33-38 and 40. *In re Lee,* 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Furthermore, the Examiner states:

> Gramlich's browser is modified so that its source call would be considered an "unmodified" message, along with other HTTP messages supported by typical browsers. Paper No. 27, page 9.

Appellant respectfully asserts that the Examiner must provide a basis in fact and/or technical reasoning to support the assertion that by combining Day, which teaches capitalizing on the ubiquity of web browsers within development organizations (column 7, lines 27-28), with Gramlich, causes Gramlich's browsers to have its source call be considered an unmodified message as asserted by the Examiner. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that by combining Day, which teaches capitalizing on the ubiquity of web browsers within development organizations (column 7, lines 27-28), with Gramlich, causes Gramlich's browsers to have its source call be considered an unmodified message, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1-8, 10, 11, 13-20, 33-38 and 40. M.P.E.P. §2143.

Furthermore, the Examiner states:

> Part of the examiner's use of 'ubiquity' lies in the notion that HTML standards change over time (i.e. HTML 2.0, 3.0, 3.2, etc.), and since each new browser release incorporates these new standards accordingly, typical 'ubiquitous' browsers people use are generally more recent versions. In this sense it is not unreasonable to interpret Day's browser as a recent typical browser, which, when applied to Gramlich, provides Gramlich the benefit of a ubiquitous browser incorporating Gramlich's (now standard) browser command call. Paper No. 27, pages 9-10.

Appellant respectfully traverses the Examiner's interpretation of "ubiquity of web browsers" as used in Day (column 7, line 28) to imply the teaching of requesting a source file using unmodified standard messaging protocols, as recited in claim 1 and similarly in

claims 21, 33 and 39. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that the Examiner's interpretation of "ubiquity of web browsers" as used in Day (column 7, line 28), implies the teaching of requesting a source file using unmodified standard messaging protocols. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that the Examiner's interpretation of "ubiquity of web browsers" as used in Day (column 7, line 28), implies the teaching of requesting a source file using unmodified standard messaging protocols, and that it be so recognized for persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950-51 (Fed. Cir. 1999). Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1-8, 10, 11, 13-20, 33-38 and 40. M.P.E.P. §2143.

C.   Response to Examiner's argument, as discussed on page 10 of Paper No. 27, that only portions of Day need to be considered when combining Gramlich with Day in an obviousness rejection.

As understood by the Appellant, the Examiner asserts that only portions of Day need to be considered when combining Gramlich with Day in an obviousness rejection. Paper No. 27, page 10. Appellant respectfully traverses. A prior art reference must be considered in its entirety, i.e., as a whole. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); M.P.E.P. §2141.02. Therefore, the Examiner is incorrect that only portions of Day need to be considered when combining Gramlich with Day in an obviousness rejection.

D.   Response to Examiner's argument, as discussed on page 10 of Paper No. 27, that Gramlich and Day teach "system users are uniquely identified in the system and in which the means for accepting new comments further comprises means for selectively restricting the inclusion of new comments in the set of comments based on the unique identity of system users" as recited in claim 16.

The Examiner asserts that Gramlich and Day teach "system users are uniquely identified in the system and in which the means for accepting new comments further

comprises means for selectively restricting the inclusion of new comments in the set of comments based on the unique identity of system users" as recited in claim 16. Paper No. 27, page 10. The Examiner cited column 8, lines 46-54 of Gramlich as teaching the above-cited claim limitation. Paper No. 20, page 5. The Examiner further states that it is well established that editors of magazines typically restrict submissions only to authorized credentialed authors. Paper No. 27, page 10. The Examiner further states that it would have been obvious to one of ordinary skill in the art at the time of the invention to interpret a "magazine" model as restricting submissions to uniquely identified users. Paper No. 27, page 10. Appellant respectfully traverses.

As stated in Appellant's Appeal Brief, Gramlich instead teaches that members of different political parties might contribute overlays to overlay groups. Gramlich further teaches that in a magazine model, paid authors submit annotations to a centralized editor who then edits and publishes the authors' annotation overlays in an overlay group(s) managed by the editor. Gramlich further teaches that in this magazine model, it is envisioned that publishers of overlay groups will sell subscriptions or, like commercial broadcasters, advertising, to cover the costs of publication. While editors of magazines may restrict submissions only to authorized credentialed authors, as asserted by the Examiner as mentioned above, Gramlich does not teach any means for selectively restricting the inclusion of new comments in a set of comments based on the unique identity of system users. Restricting submissions only to authorized credentialed authors is not the same as restricting the inclusion of comments based on the identity of system users. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, the Examiner does not provide a motivation for modifying Gramlich to identify system users and in which the means for accepting new comments further comprises means for selectively restricting the inclusion of new comments in the set of comments based on the unique identity of system users, as recited in claim 16. In order

to establish a *prima facie* case of obviousness, the Examiner must provide a motivation to modify Gramlich to identify system users and in which the means for accepting new comments further comprises means for selectively restricting the inclusion of new comments in the set of comments based on the unique identity of system users. M.P.E.P. §2142. The Examiner has not provided any such motivation but instead relies upon his own subjective opinion which is insufficient to establish a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 16. *Id.*

> E.   Response to Examiner's argument, as discussed on pages 10-11 of Paper No. 27, that Gramlich and Day teach "the source file is associated with a defined cutoff date and in which the means for accepting new comments further comprises means for selectively restricting the inclusion of new comments on dates past the defined cutoff date " as recited in claim 17.

The Examiner asserts that Gramlich and Day teach " the source file is associated with a defined cutoff date and in which the means for accepting new comments further comprises means for selectively restricting the inclusion of new comments on dates past the defined cutoff date" as recited in claim 17. Paper No. 27, pages 10-11. The Examiner states:

> As explained in the Final office action, the limitation of defined cutoff dates and restricting comments on dates past said cutoff date, would have been obvious to one of ordinary skill in the art at the time of the invention, in view of Gramlich, because Gramlich teaches selling subscriptions to overlay groups (in a magazine model), suggesting the use of cutoff dates and deadlines for article submission and user/author inclusion. The use of 'selling subscriptions' can encompass the selling of a 'block of time' in which (along with a set of magazine mailings) a particular set of good(s) and/or service(s) are available during said time period (i.e. as in a member of a society, or a block of airtime, etc.). Obviously, when said block of time ends, the typical user is restricted (i.e. cutoff) from said good(s)/service(s). In addition, magazine editors typically employ 'cutoff dates' in order to meet publication deadlines. In view of the above, along with the teachings within the Final office action, it would have been obvious to one of ordinary skill in the art at the time of the invention to interpret Gramlich's teachings to teach and/or suggest Appellant's claimed inventions. Paper No. 27, pages 10-11.

While magazine editors may employ "cutoff dates" as suggested by the Examiner, this is not the same as a <u>source file</u> associated with a cutoff date. Neither is this the same as selectively <u>restricting the inclusion of new comments</u> on dates past the defined cutoff date. There is no language in Gramlich that teaches a source file associated with a defined cutoff date. Neither is there any language in Gramlich that teaches selectively restricting the inclusion of new comments on dates past the defined cutoff date. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet,* 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, while a block of time may be sold to an advertiser, such as on a radio show, this is not the same as a <u>source file</u> associated with a cutoff date. Neither is this the same as selectively <u>restricting the inclusion of new comments</u> on dates past the defined cutoff date. Again, there is no language in Gramlich that teaches a source file associated with a defined cutoff date. Neither is there any language in Gramlich that teaches selectively restricting the inclusion of new comments on dates past the defined cutoff date. Therefore, the Examiner has not presented a *prima facie* case of obviousness, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet,* 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, the Examiner has not submitted any objective evidence, as required in an obviousness rejection, for modifying Gramlich to have a source file associated with a defined cutoff date and in which the means for accepting new comments further comprises means for selectively restricting the inclusion of new comments on dates past the defined cutoff date. *In re Lee,* 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner has not presented a *prima facie* of obviousness for rejecting claim 17. *Id.*

Further, the Examiner does not provide a motivation for modifying Gramlich to have a source file associated with a defined cutoff date and in which the means for accepting new comments further comprises means for selectively restricting the inclusion

of new comments on dates past the defined cutoff date, as recited in claim 17. In order to establish a *prima facie* case of obviousness, the Examiner must provide a motivation to modify Gramlich to have a source file associated with a defined cutoff date and in which the means for accepting new comments further comprises means for selectively restricting the inclusion of new comments on dates past the defined cutoff date. M.P.E.P. §2142. The Examiner has not provided any such motivation but instead relies upon his own subjective opinion which is insufficient to establish a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 17. *Id.*

> F.   Response to Examiner's argument, as discussed on page 11 of Paper No. 27, that the Examiner did present objective evidence and appropriate motivation for combining Gramlich with Day and Tran.

The Examiner asserts that Appellant argues that the motivation to combine references cannot originate from a secondary reference. Paper No. 27, page 11. Appellant agrees with the Examiner that the motivation to combine references can originate from the secondary reference or from the primary reference as well as from the knowledge generally available to one of ordinary skill in the art. M.P.E.P. §2142.

However, the Examiner's motivation, "because of Tran's taught advantage of linked lists " (Paper No. 20, page 6; Paper No. 27, page 12), does not address as to why one of ordinary skill in the art would modify the primary reference, Gramlich, to represent a source file as a linked list of objects corresponding to a hypertext representation of the source file where the markup file is a binary file representation of the linked list, as recited in claim 2 and similarly in claims 21, 29, 34 and 39 (Examiner admits that Gramlich does not teach this limitation). *See In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). The Examiner states that it is well established that linked lists provide an advantage of dynamic memory allocation. Paper No. 27, page 12. However, the Examiner has not explained how providing an advantage of dynamic memory allocation is motivation for modifying Gramlich to represent a <u>source file as a linked list of objects corresponding to a hypertext representation of the source file</u> where the

markup file is a binary file representation of the linked list. That is, the Examiner's motivation is not a motivation to modify Gramlich to represent a source file as a linked list of objects corresponding to a hypertext representation of the source file where the markup file is a binary file representation of the linked list. In order to establish a *prima facie* case of obviousness, the Examiner must provide a suggestion or motivation to modify Gramlich to represent a source file as a linked list of objects corresponding to a hypertext representation of the source file where the markup file is a binary file representation of the linked list. M.P.E.P. §2143. Since the Examiner has not provided such a motivation, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2-8, 11, 13-15 and 34-38. M.P.E.P. §2143.

G.   Response to Examiner's argument, as discussed on page 11 of Paper No. 27, that only portions of Tran need to be considered when combining Gramlich and Day with Tran in an obviousness rejection.

As understood by Appellant, the Examiner further asserts that only portions of Tran need to be considered when combining Gramlich with Tran in an obviousness rejection. Paper No. 27, page 11. Appellant respectfully traverses. A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.,* 721 F.2d 1540, 220 U.S.P.Q. 303 (Fed. Cir. 1983), *cert. denied,* 469 U.S. 851 (1984); M.P.E.P. §2141.02. As stated in Appellant's Appeal Brief, as a result of combining Gramlich with Tran, the principle of operation in Gramlich would change, and subsequently render the operation of Gramlich to perform its purpose unsatisfactorily. Therefore, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 2-8, 11, 13-15 and 34-38. *In re Gordon,* 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984); *In re Ratti,* 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959).

H.　　Response to Examiner's argument, as discussed on page 12 of Paper No. 27, that Gramlich can be combined with Tran without rendering the operation of Gramlich to perform its purpose unsatisfactorily.

The Examiner asserts that Gramlich can be combined with Tran without causing Gramlich to perform its purpose unsatisfactorily. The Examiner states:

> It is respectfully submitted that Tran can be combined with Gramlich. Both references associate annotations with documents or images. Gramlich deals with HTML, which is hypertext that can (and typically does) include various multimedia (i.e. text, images, sound, movies, etc.). There is no reason why Tran's annotation system cannot be applied to a web page of Gramlich, providing Gramlich multimedia web pages (i.e. handwritten messages, annotations, etc. applied to CAD image drawings on a web page). Tran teaches a mobile computer, however, Gramlich's invention can easily be implemented on a mobile computer (i.e. laptop) as well. Gramlich teaches a hypertext representation of a source file. The examiner applies a linked list structure to the hypertext files of Gramlich. Both are combinable, since both deal with annotating document/images, both are associated with the Internet, see above, also Final Rejection. Paper No. 27, page 12.

Appellant respectfully asserts that the principle of operation of Gramlich would change by combining Gramlich with Tran. Tran specifically teaches annotating a hand drawing or a photograph and not a WWW document. Tran is not associated with the Internet as asserted by the Examiner. There is no language in Tran to assert that the teachings could be applied to annotating a WWW document. Instead, Tran teaches that the present invention can operate with digital cameras, APS-compatible cameras and conventional cameras which work with silver halide type films. Abstract of Tran. Further, the drawing system of Tran can be used in two-way messaging systems (cellular phones) to support graphical paging requests and replies. Abstract of Tran. Tran further teaches converting hand drawings drawn on a mobile computer into CAD-like drawings. Column 5, lines 25-35. While Tran teaches a mobile computer, there is no teaching of annotating a WWW document. Instead, Tran teaches annotating hand drawings drawn on a mobile computer. Tran further teaches annotating pictures taken with a camera. Column 5, lines

39-41. Hence, Tran teaches annotating hand sketches on a mobile computer or annotating pictures taken with a camera. Column 5, lines 25-50.

Further, Gramlich teaches storing annotation overlays on an overlay server. Abstract of Gramlich. Tran, however, does not teach storing annotations on a server. Tran instead teaches an embodiment of the camera with annotation capability. Column 19, lines 33-34. Tran further teaches that in which in this embodiment, a conventional silver-halide film which has been commercially available since the beginning of the film industry is adapted as a data storage element to store annotations. Column 19, lines 34-38. Hence, these annotations are not stored in a server but in a conventional silver-halide film.

By combining Gramlich with Tran, Gramlich would no longer be able to store annotation overlays on servers that would be used to annotate a WWW document, which is Gramlich's principle of operation. Abstract of Gramlich. By combining Gramlich with Tran, the principle of operation in Gramlich would change, and subsequently render the operation of Gramlich to perform its purpose unsatisfactorily. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2-8, 11, 13-15 and 34-38. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984); *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959).

I.   Other matters raised by the Examiner.

All other matters raised by the Examiner have been adequately addressed above and in Appellant's Appeal Brief and therefore will not be addressed herein for the sake of brevity.

II.   CONCLUSION

For the reasons stated in Appellant's Appeal Brief and noted above, Appellant respectfully asserts that the rejections of claims 1-8, 10, 11, 13-20, 33-38 and 40 are in error. Appellant respectfully requests reversal of the rejections and allowance of claims 1-8, 10, 11 and 13-41.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

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